

Senate Bill No. 941

Passed the Senate September 9, 1999

Secretary of the Senate

Passed the Assembly September 1, 1999

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 1065.3, 1669, 1727, 1748, and 1748.5 of, and to add Sections 1723, 1742.2, and 12968 to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 941, Speier. Insurance: licensees.

(1) Existing law provides for licensing of various types of insurance agents by the Insurance Commissioner, including fire and casualty broker-agents and life agents. Existing law authorizes the commissioner to issue restricted licenses in certain cases, and to suspend or revoke licenses, as specified.

This bill would require the commissioner, at the time any original or renewal application for any license issued under the Insurance Code shows a conviction of a felony involving dishonesty or breach of trust, or a conviction of a violation of a certain federal statute involving insurance activities affecting interstate commerce, to either deny the application or give written consent to the applicant or licensee to engage in the business of insurance, as specified.

(2) Existing law authorizes the commissioner, without hearing, to deny an application for a license upon a final judgment of conviction of the applicant of a felony or of certain misdemeanors, including a judgment following a plea of nolo contendere. Existing law also authorizes the commissioner, without hearing, to deny an application for a license if the applicant had a previous application for a license denied, or had a previously issued license suspended or revoked for cause, in the last 5 years.

This bill would allow the commissioner to also deny an application, without hearing, upon a plea of guilty or nolo contendere by the applicant with respect to these crimes, but would require the commissioner, upon petition by the applicant, to vacate an order based upon a plea that does not at any time result in a judgment of conviction. This bill would also authorize the commissioner to deny



a license, without hearing, if the applicant had any previous application for any professional, occupational, or vocational license denied by any licensing authority, or had any previous license in that regard suspended or revoked, in the last 5 years, as specified.

(3) Existing law authorizes the commissioner, by regulation, to require licensees acting as insurance agents or brokers to maintain certain records.

This bill would provide that these records shall be open to inspection or examination by the commissioner at all times, and that a licensee subject to these provisions may be required to furnish the information contained in those records to the commissioner.

(4) Existing law authorizes the commissioner to allow a licensee to elect to pay an alternative monetary penalty, not to exceed \$1,000 for each offense, \$5,000 in the aggregate for all offenses involved in any one proceeding, or as otherwise specified, in lieu of a license suspension or other permitted license action.

This bill would instead provide that the alternative monetary penalty may not exceed \$4,000 for each offense or \$20,000 in the aggregate for all offenses in any one proceeding, or as otherwise specified. It would also provide for reimbursement of the commissioner's costs and make other related changes, as specified.

(5) Existing law provides that the commissioner may issue an order, upon making certain findings, suspending a subject person from his or her office or employment with a production agency and from further participation in any manner in the conduct of the business of the insurer or production agency. Existing law defines "subject person" for these purposes to mean any director, officer, or employee of a production agency, any natural person who participates in the management or control of the business of a production agency, or any person licensed as a producer.

This bill would modify the definition of "subject person" to mean any person who has participated or may participate in any manner in the business of a production agency, or any person licensed as a producer. This bill

would require the commissioner to issue that order, and would modify the required findings.

(6) This bill would enact other related provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 1065.3 of the Insurance Code is amended to read:

1065.3. If, after hearing as provided by Section 1065.1 or subdivision (b) of Section 1065.2, any of the statements as to conduct, conditions, or grounds in the notice are found to be true, the commissioner shall make an order or orders as may be reasonably necessary to correct, eliminate, or remedy the conduct, conditions, or grounds. As part of the order or orders, the commissioner may also order the person to whom the order is directed to fully reimburse the commissioner for the commissioner's costs in investigating, examining, and prosecuting the matter. An order of reimbursement shall be enforced as provided in Section 1065.5.

SEC. 2. Section 1669 of the Insurance Code is amended to read:

1669. The commissioner may, without hearing, deny an application if the applicant has:

(a) Committed a felony as shown by a plea of guilty or nolo contendere, or by a final judgment of conviction thereof;

(b) Committed a misdemeanor denounced by this code or by other laws regulating insurance as shown by a plea of guilty or nolo contendere, or by a final judgment of conviction thereof;

(c) Had a previous application for a professional, occupational, or vocational license denied for cause by any licensing authority, within five years of the date of the filing of the application to be acted upon, on grounds that should preclude the granting of a license by the commissioner under this chapter; or

(d) Had a previously issued professional, occupational, or vocational license suspended or revoked for cause by any licensing authority, within five years of the date of the



filing of the application to be acted upon, on grounds that should preclude the granting of a license by the commissioner under this chapter.

In the event the commissioner issues an order based on a plea that does not at any time result in a judgment of conviction, the commissioner shall vacate the order upon petition by the applicant.

SEC. 3. Section 1723 is added to the Insurance Code, to read:

1723. (a) At the time any original or renewal license application that is submitted to the commissioner shows a conviction of the applicant of a felony involving dishonesty or breach of trust, or of a violation of Section 1033 of Title 18 of the United States Code, the commissioner shall either commence a proceeding pursuant to Section 1668 or 1669, or Section 1738 in the case of a renewal application, or give written consent to the applicant or licensee pursuant to paragraph (2) of subsection (e) of Section 1033 of Title 18 of the United States Code.

(b) This section shall apply to all licenses and registrations issued by the commissioner pursuant to this code, whether included in this chapter or in any other chapter of this code, and without regard to whether another chapter incorporates the requirements of this section by reference.

SEC. 4. Section 1727 of the Insurance Code is amended to read:

1727. (a) The commissioner shall, after notice and hearing, promulgate reasonable rules and regulations specifying the manner and type of records to be maintained by those licensees acting as insurance agents and brokers and the location where the records shall be kept. Those records shall be open to inspection or examination by the commissioner at all times, and the commissioner may at any time require the licensee to furnish any information maintained or required to be maintained in those records.

(b) Every licensee acting as an insurance agent and broker shall keep the records as required by the regulations promulgated pursuant to subdivision (a).

(c) Every licensee acting as an insurance agent and broker employing a licensee in the capacity of an insurance solicitor shall keep the records required by the regulations promulgated pursuant to subdivision (a) for any insurance transacted by the insurance solicitor in the capacity of employee of the employing licensee.

SEC. 5. Section 1742.2 is added to the Insurance Code, to read:

1742.2. The department shall promulgate regulations necessary to comply with the requirements of Section 1033 of Title 18 of the United States Code no later than January 1, 2001.

SEC. 6. Section 1748 of the Insurance Code is amended to read:

1748. The commissioner, in any proceeding under the provisions of this article, may, by an alternative order, permit a licensee to elect in writing to pay a specified money penalty, within a specified time in lieu of a license suspension or other permitted action. If the licensee so elects, the sum of money specified shall be paid to the commissioner for the use of the State of California. The sum specified shall not exceed:

(a) Four thousand dollars (\$4,000) for each offense.

(b) Twenty thousand dollars (\$20,000) in the aggregate for all offenses involved in any one proceeding.

(c) Thirty percent of the gross commissions on insurance transacted by the licensee in the preceding calendar year.

(d) Any amount proven, or admitted, in the proceeding to have been received and retained by the licensee in violation of this code.

The commissioner shall determine the monetary penalty to be paid in any given case and in so doing shall not be limited to the selection of the penalty specified in any one of the above subdivisions, as compared with the penalty in any of the other three subdivisions, that will result in the payment by the licensee of the least amount.



The amount of reimbursement the commissioner orders shall be the amount that fully reimburses the commissioner for the commissioner's costs, or any lesser amount that the commissioner determines is the most the subject of the order can pay in the event the subject is financially unable to fully reimburse the commissioner.

If a licensee fails to pay a monetary penalty or reimbursement within the time specified in the order, the commissioner, unless the order is lawfully stayed, may deny a pending application for a license, or may revoke or suspend the license of the subject of the order for a period of time as determined by the commissioner. If, for any reason, an application is denied, or a license is revoked or suspended, before the subject of the order has paid the full amount of an ordered monetary penalty or reimbursement, the balance owed shall be paid before a license may be reinstated or an application for any new license may be granted.

SEC. 7. Section 1748.5 of the Insurance Code is amended to read:

1748.5. (a) For the purposes of this section, the following definitions are applicable:

(1) "Production agency" means any person or organization licensed under Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 7 (commencing with Section 1800), or Chapter 8 (commencing with Section 1831).

(2) "Subject person" means any person who has participated or may participate in any manner in the business of a production agency, or any person licensed as a producer.

(3) "Insurer" means any domestic insurer, and any insurer that is admitted to transact insurance in this state, provided that if a subject person of an insurer is not a resident of California, or operating out of a place of business within California, then the subject person shall be engaged in direct management, direction, or conduct of the business of insurance in California in order to come within the provisions of this section.



(b) If, after notice and a hearing, the commissioner finds all of the following, the commissioner may issue an order removing a subject person from his or her office or employment with the production agency and prohibiting the subject person from participating in any manner in the conduct of the business of an insurer or production agency, except with the prior consent of the commissioner:

(1) (A) The subject person has engaged in misconduct with respect to the business of insurance that has caused financial or other injury to any person, or

(B) The subject person has engaged in fraud, or willful acts or omissions involving dishonesty that exposed a person to financial or other injury; and

(2) The subject person's conduct or practice demonstrates unfitness to continue as a subject person.

(c) (1) If the commissioner gives written notice pursuant to subdivision (b) to a subject person, the commissioner shall immediately issue an order prohibiting the subject person from participating in any manner in the business of insurance, except with the prior consent of the commissioner, if the commissioner: (A) finds that failure to immediately issue the order threatens the financial solvency of an insurer or may reasonably be expected to cause irreparable injury to any person; (B) serves that subject person and the production agency with written notice of the suspension order; and (C) finds that all of the necessary factors are present which would permit the commissioner, after notice and a hearing, to issue an order pursuant to subdivision (b) removing a subject person from his or her office or employment with the production agency and prohibiting the subject person from participating in any manner in the business of an insurer or production agency.

(2) Any suspension order issued pursuant to paragraph (1) of this subdivision shall be effective until the date the commissioner dismisses the charges contained in the notice served under subdivision (b) or paragraph (1) of this subdivision, the effective date of an order issued by the commissioner pursuant to subdivision



(b), or a court issues a stay of the order pursuant to subdivision (d).

(d) Within 10 days after a subject person has been served with an order of suspension pursuant to subdivision (c), the person may apply to the superior court of the county in which the principal office of the production agency is located for a stay of the order pending completion of the proceedings pursuant to subdivision (b), and the court shall have jurisdiction to issue an order staying the suspension. Nothing in this subdivision shall be deemed to authorize the court to issue a stay order on an ex parte basis.

(e) (1) If the commissioner finds both of the following, he or she shall immediately issue an order suspending a subject person from his or her office or employment with a production agency and prohibiting the subject person from participating in any manner in the conduct of the business of an insurer or production agency, except with the prior consent of the commissioner: (A) the subject person has been charged in an indictment issued by a grand jury, or in an information, complaint, or similar pleading issued by a United States Attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime punishable by imprisonment for a term exceeding one year and which involves as one of its necessary elements a fraudulent act or an act of dishonesty in the acceptance, custody, or payment of money or property; and (B) that a failure to immediately issue the order threatens the financial solvency of an insurer or may cause financial or other injury to any person.

In the event the criminal proceedings are terminated other than by judgment of conviction, an order issued pursuant to paragraph (1) of this subdivision shall be deemed rescinded as if it had not been issued.

(2) If the commissioner finds both of the following, he or she may immediately issue an order removing a subject person from his or her office or employment with a production agency and prohibiting the subject person



from participating in any manner in the business of an insurer or production agency, except with the prior consent of the commissioner: (A) the person has during the preceding five years been convicted of a crime that is punishable by imprisonment for a term exceeding one year and has as one of its necessary elements a fraudulent act or an act of dishonesty in the accepting, custody, or payment of money or property; and (B) that a failure to immediately issue the order threatens the financial solvency of an insurer or may cause financial or other injury to any person.

(3) The fact that any subject person charged with a crime involving as one of its necessary elements a fraudulent act or any act of dishonesty in the acceptance, custody, or payment of money or property is not convicted of that crime shall not preclude the commissioner from issuing an order regarding the subject person pursuant to other provisions of this code.

(f) (1) Within 30 days after an order is issued pursuant to subdivision (c) or (e), the subject person to whom the order is issued may choose to do either of the following: (A) file with the commissioner an application for a hearing on the order. The commissioner shall, upon the written request of the subject person, extend the 30-day period by an additional 30 days provided the request is filed with the commissioner within 30 days after the order is issued. If the commissioner fails to commence the hearing within 15 business days after the application is filed, or within a longer period of time to which the subject person consents, the order shall be deemed rescinded as if it had not been issued. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded as if it had not been issued, or (B) petition for judicial review of the order pursuant to Section 1085 of the Code of Civil Procedure, where the court shall exercise its independent judgment on the evidence.

(2) The right of any subject person to whom an order is issued pursuant to subdivision (c) or (e) to petition for judicial review of the order shall not be affected by the



failure of that subject person to apply to the commissioner for a hearing on the order as provided by this subdivision.

(g) (1) Any person to whom an order is issued pursuant to subdivision (b), (c), or (e) may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application unless he or she finds that it is reasonable to believe that the person will, if and when he or she becomes a subject person, comply with all of the applicable provisions of this code and of any regulation or order issued thereunder.

(2) The right of any subject person to whom an order is issued pursuant to subdivision (b), (c), or (e) to petition for judicial review of the order shall not be affected by the failure of that subject person to apply to the commissioner pursuant to paragraph (1).

(h) (1) It is unlawful for any subject person or former subject person to whom an order is issued pursuant to subdivision (b), (c), or (e) to do any of the following as long as the order is in effect, except with the prior consent of the commissioner: (A) to serve or act as a subject person for any insurer or production agency; or (B) to directly or indirectly vote any shares or other securities of an insurer or production agency.

(2) If, after notice and a hearing, the commissioner finds that any subject person has violated paragraph (1) of this subdivision, the commissioner may order that subject person to pay to the commissioner a civil penalty, which may be recovered in a civil action, in an amount the commissioner may specify; provided however, that the amount of the civil penalty shall not exceed one thousand dollars (\$1,000) for each day for which the violation continues.

In determining the amount of civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the subject person charged, the gravity of the violation, the history of previous violations by the person, and other factors as in the opinion of the commissioner may be relevant.



(3) If, after notice and a hearing, the commissioner finds that any production agency has knowingly aided and abetted a subject person in a violation of paragraph (1) of this subdivision, or subdivision (h) of Section 728, the commissioner may order that production agency to pay to the commissioner a civil penalty in an amount the commissioner may specify; provided however, that the amount of the civil penalty shall not exceed one thousand dollars (\$1,000) for each violation or in the case of a continuing violation, one thousand dollars (\$1,000) for each day for which the violation continues, up to a maximum of fifty thousand dollars (\$50,000). Continuation of the subject person's salary or other employee benefits pending final disposition shall not be considered aiding and abetting a subject person.

In determining the amount of civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the subject person charged, the gravity of the violation, the history of previous violations by the person, and other factors as in the opinion of the commissioner may be relevant.

(i) Except as otherwise provided by this section, any hearing required by this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, subject to the following:

(1) At the option of the subject person, all hearings shall be a closed session and private, and the records of the hearings shall not be made public unless the hearing results in a final order adverse to the subject person.

(2) Where judicial review is sought by the subject person pursuant to Section 1085 of the Code of Civil Procedure, the court shall exercise its independent judgment upon the evidence.

(3) When a subject person to whom an order has been issued pursuant to subdivision (c) or (e) applies to the commissioner for a hearing pursuant to subparagraph (A) of paragraph (1) of subdivision (f), the Office of Administrative Hearings shall schedule the hearing on a



priority basis at the earliest possible time and once the hearing is commenced, it shall not be continued for more than three business days without the consent of the subject person.

(4) If the Office of Administrative Hearings cannot schedule the commencement of a hearing within 15 business days as provided by paragraph (1) of subdivision (f), and the subject person does not waive his or her right to a hearing commencing within 15 days, the hearings may be conducted by administrative law judges appointed by the commissioner; the hearing shall be completed within 45 days of commencement, unless additional time is requested by the subject person. If the hearing is not completed within the 45 days, the order shall be deemed rescinded as if it had not been issued. The scheduling of other hearings before the administrative law judge shall not be considered good cause for purposes of this paragraph.

(j) Nothing in this section is intended to or shall be construed to create a private cause of action against an offending subject person or insurer or production agency that aids and abets a subject person, based on the standards established by this section or the commissioner's findings or orders pursuant to this section.

SEC. 8. Section 12698 is added to the Insurance Code, to read:

12698. Every pleading issued by the commissioner to initiate a formal enforcement action against a licensee under this code, and every order issued by the commissioner or a court of competent jurisdiction or other document that resolves a formal enforcement action, shall be displayed on the department's internet web site, if the document is a public record that is not exempt from disclosure to the public pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 9. The Legislature finds and declares that the amendments to Section 1727 of the Insurance Code, made



by Section 3 of this act do not constitute a change in, but are declaratory of, existing law.



Approved _____, 1999

Governor

